

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TEVIS IGNACIO,

Plaintiff,

vs.

THE U.S. DOLLAR, et al.,

Defendant(s).

3:08-CV-0194-BES (VPC)

**REPORT AND RECOMMENDATION
OF U.S. MAGISTRATE JUDGE**

November 14, 2008

This Report and Recommendation is made to the Honorable Brian E. Sandoval, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B). Before this court is plaintiff's application to proceed *in forma pauperis* on appeal (#10). As set forth below, it is recommended that plaintiff's application to proceed *in forma pauperis* on appeal be denied.

This is a civil rights action brought *pro se* pursuant to 42 U.S.C. § 1983. The court dismissed this action with prejudice on October 6, 2008 (#7) pursuant to the report and recommendation of the Magistrate Judge finding plaintiff's complaint to be frivolous under 28 U.S.C. § 1915(e)(2)(B)(i) (#5).

On October 15, 2008, plaintiff filed a notice of appeal (#9) and an application to proceed *in forma pauperis* on appeal (#10). That application indicates that plaintiff is financially unable to pay the \$455 filing fee. However, the court recommends that plaintiff's application to proceed *in forma pauperis* on appeal be denied. 28 U.S.C. § 1915(3) provides that "[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith." The good faith standard is an objective one. *See Coppedge v. United States*, 369 U.S. 438, 445 (1962). An appeal is not taken in good faith if the issue presented is frivolous. *Id.*

In this case, the court has already found that the claims asserted in plaintiff's complaint lack an arguable basis in either law or fact and are frivolous (#5). In view of this finding, the undersigned

1 Magistrate Judge recommends that the District Court certify that plaintiff's appeal is not brought in
2 good faith within the meaning of 28 U.S.C. § 1915(a)(3), and deny plaintiff's application to proceed
3 *in forma pauperis*.

4 The parties are advised:

5 1. Pursuant to 28 U.S.C § 636(b)(1)(C) and Rule IB 3-2 of the Local Rules of Practice, the
6 parties may file specific written objections to this report and recommendation within ten days of
7 receipt. These objections should be entitled "Objections to Magistrate Judge's Report and
8 Recommendation" and should be accompanied by points and authorities for consideration by the
9 District Court.

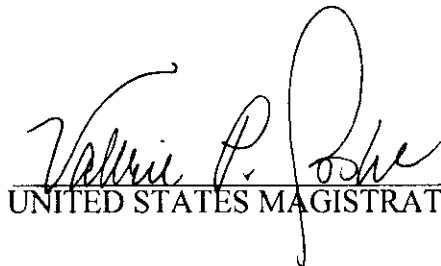
10 2. This report and recommendation is not an appealable order and any notice of appeal
11 pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District Court's judgment.

12 **III. RECOMMENDATION**

13 **IT IS THEREFORE RECOMMENDED** that the district court enter an order:

- 14 1. **DENYING** plaintiff's application to proceed *in forma pauperis* on appeal (#10);
15 and
16 2. **CERTIFYING** that plaintiff's appeal is **NOT TAKEN IN GOOD FAITH** within
17 the meaning of 28 U.S.C. § 1915(a)(3).

18 DATED: November 14, 2008.

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21 UNITED STATES MAGISTRATE JUDGE
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